



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/807,704	07/25/2001	Stig Jansson	CU-2513 RJS	2557

26530 7590 01/03/2006

LADAS & PARRY LLP  
224 SOUTH MICHIGAN AVENUE  
SUITE 1600  
CHICAGO, IL 60604

EXAMINER
----------

WINSTON, RANDALL O

ART UNIT	PAPER NUMBER
----------	--------------

1655

DATE MAILED: 01/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/807,704

Applicant(s)

JANSSON ET AL.

Examiner

Randall Winston

Art Unit

1655

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 13-32 and 34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 13-32 and 34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

Acknowledgement is made of the receipt and entry of the amendment filed on 10/04/2005.

Claims 13-32 and 34 are under examination.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 13-32 and 34 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Jansson et al. (No. Patent application number 1993 3009) in view of Keyes (US 4,713,335).

Applicant argues '009 process entirely lacks any teaching, or even any suggestion of first determining the physical attributes of an oil, thereby determining a parameter vital to the claimed process, that of the denaturing temperature which dictates the subsequent step of heating to below the denaturing temperature. (Page 9 of the '009 specification merely observes what is well known in the art, that low temperature processes produce undenatured proteins). Moreover, applicant also argues in the absence of such contemplation, there simply was no suggestion or motivation to modify the '009 with commonly known experimental procedures such as the viscosity measurements etc as taught in the '335 patent.

Applicant's argument are not found persuasive because claims 13-32 and 34 stand rejected under 35 U.S.C. 103(a) for the reasons set forth in examiner's non final office action of 05/04/2005. As Examiner stated in his office action of 05/04/2005, a determining step prior to the heating step in order not to denature the protein would be an intrinsic feature within '009 process. On page 9 lines 2-5 of '009, it states that low-temperatures should be used within its process not to denature the proteins. Thus, a determining step would be an intrinsic feature within '009's process because '009 discloses monitoring its process's temperature by utilizing a low temperature for the purpose of not to denature the protein.

Furthermore, as Examiner stated in his office action of 05/04/2005, Keyes '335 beneficially teaches (see, e.g. column 5 lines 29-35) that viscosity measurements are used to monitor protein denaturation and/or determine the denaturing temperature within a material. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Jansson et al.'s process to include the disclosure of viscosity measurements are used to monitor protein denaturation and/or determine the denaturing temperature within a material as taught by Keyes' because the combined teachings would create a method of separating elements from a material wherein the elements separated do not contain denatured proteins. The adjustment of conventional working conditions (e.g the heating step is performed continuously and/or semi-continuously, the isolation step and the freezing rate and/or time period), is deemed merely a matter of judicial selection and routine optimization which is well within the purview of the skilled artisan. Moreover, as the references indicate the

Art Unit: 1655

various different steps used by the claimed method is result variable, therefore, they could be routinely optimized by one of ordinary skill in the art of practicing the invention disclosed by the references. (e.g., the ordered pretreatment steps and the ordered mechanically treating steps occurs before said freezing step) (Please note the selection of any order of performing process steps is *prima facie* obvious in the absence of new or unexpected results. (see, e.g., *Ex parte Rubin*, 128 USPQ 440, 1959, and *In re Burhans*, 154 F.2d 690, 69 USPQ 330-CCPA 1946) MPEP 2144.04)

Accordingly, the invention as a whole is *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, especially in the absence of evidence to the contrary.

**No claims are allowed.**

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Randall Winston whose telephone number is 571-272-0972. The examiner can normally be reached on 8AM-5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on 571-272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Susan D. We*  
12-21-05  
SUSAN COE  
PRIMARY EXAMINER